

**Third Draft
December 13, 2018**

CONTRACT

FOR

PRIVATE REDEVELOPMENT

between

**ECONOMIC DEVELOPMENT AUTHORITY
FOR THE CITY OF SHAKOPEE, MINNESOTA**

and

ENCLAVE DEVELOPMENT, LLC

Dated December __, 2018

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: 612-337-9300

TABLE OF CONTENTS

	<u>Page</u>
PREAMBLE	1
 ARTICLE I <u>Definitions</u> 	
Section 1.1. Definitions	3
 ARTICLE II <u>Representations and Warranties</u> 	
Section 2.1. Representations by the Authority.....	6
Section 2.2. Representations and Warranties by the Redeveloper.....	6
 ARTICLE III <u>Property Acquisition; Financing</u> 	
Section 3.1. Status of Redevelopment Property.....	8
Section 3.2. Conveyance of Redevelopment Property.....	8
Section 3.3. Reimbursement of Certain Redeveloper Costs	10
Section 3.4. Redevelopment Grant	10
Section 3.5. Interfund Loan	11
Section 3.6. Payment of Administrative Costs	11
Section 3.7. Records	11
Section 3.8. Exemption from Business Subsidy Act	11
 ARTICLE IV <u>Construction and Maintenance of Minimum Improvements</u> 	
Section 4.1. Construction of Improvements	12
Section 4.2. Construction Plans	12
Section 4.3. Commencement and Completion of Construction.....	13
Section 4.4. Certificate of Completion	13
Section 4.5. Construction of Redeveloper Site Improvements	14
 ARTICLE V <u>Insurance</u> 	
Section 5.1. Insurance.....	15
 ARTICLE VI <u>Tax Increment and Taxes</u> 	
Section 6.1. Right to Collect Delinquent Taxes.....	17
Section 6.2. Minimum Assessment Agreement.....	17
Section 6.3. Reduction of Taxes	17

ARTICLE VII
Financing

Section 7.1.	Mortgage Financing.....	19
Section 7.2.	Authority's Option to Cure Default on Mortgage.....	19
Section 7.3.	Modification; Subordination.....	19
Section 7.4.	Termination.....	19

ARTICLE VIII
Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1.	Representation as to Development.....	20
Section 8.2.	Prohibition Against Redeveloper's Transfer of Property and Assignment of Agreement	20
Section 8.3.	Release and Indemnification Covenants	21

ARTICLE IX
Events of Default

Section 9.1.	Events of Default Defined	23
Section 9.2.	Remedies on Default.....	23
Section 9.3.	No Remedy Exclusive	24
Section 9.4.	No Additional Waiver Implied by One Waiver	24
Section 9.5.	Attorneys' Fees	24

ARTICLE X
Additional Provisions

Section 10.1.	Conflict of Interests; Authority Representatives Not Individually Liable	25
Section 10.2.	Equal Employment Opportunity	25
Section 10.3.	Restrictions on Use	25
Section 10.4.	Titles of Articles and Sections	25
Section 10.5.	Notices and Demands	25
Section 10.6.	Counterparts.....	26
Section 10.7.	Recording.....	26
Section 10.8.	Amendment.....	26
Section 10.9.	Authority Approvals	26
Section 10.10.	Termination.....	26
Section 10.11.	Choice of Law and Venue.....	26
Section 10.12.	Estoppel Certificate.....	26

TESTIMONIUM	S-1
SIGNATURES	S-1

EXHIBIT A	DESCRIPTION OF REDEVELOPMENT PROPERTY	A-1
EXHIBIT B	FORM OF GUARANTY.....	B-1
EXHIBIT C	CERTIFICATE OF COMPLETION	C-1
EXHIBIT D	MINIMUM ASSESSMENT AGREEMENT	D-1
EXHIBIT E	PUBLIC REDEVELOPMENT COSTS	E-1

CONTRACT FOR PRIVATE REDEVELOPMENT

THIS CONTRACT FOR PRIVATE REDEVELOPMENT, made as of the ____ day of December, 2018 (the “Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and ENCLAVE DEVELOPMENT, LLC, a North Dakota limited liability company (the “Redeveloper”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended (the “EDA Act”) and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; and

WHEREAS, the City has undertaken a program to promote economic development and job opportunities and to promote the development and redevelopment of land which is underutilized within the City, and in this connection created the Minnesota River Valley Housing and Redevelopment Project No. 1 (the “Project”) in an area located in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “HRA Act”); and

WHEREAS, by resolution dated April 4, 1995, the City Council of the City transferred control, authority, and operation of the Project to the Authority, which currently administers the Project, exercising the powers of a housing and redevelopment authority under the HRA Act, in accordance with the EDA Act; and

WHEREAS, pursuant to the HRA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the redevelopment of real property by private enterprise and promote the development of housing within the City; and

WHEREAS, the City and the Authority have established Tax Increment Financing District No. 20 (the “TIF District”), a redevelopment district, within the Project and have adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate development of certain property in the Project and promote the development of housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended; and

WHEREAS, prior to the establishment of the TIF District, the Authority and the City designated parcels within the Project as occupied by structurally substandard buildings; and

WHEREAS, the City Council of the City adopted a resolution approving an interfund to pay for costs of the demolition of the substandard buildings within the TIF District, site improvements, environmental remediation, and administrative costs, and the Authority agreed to reimburse the City for such costs from tax increments derived from real property located within the TIF District; and

WHEREAS, the Authority owns, and the Redeveloper proposes to acquire, certain property described in EXHIBIT A attached hereto (the “Redevelopment Property”) within the TIF District and develop approximately 80 market-rate apartment units, including underground parking, at grade enclosed parking, and approximately 1,500 square feet commercial space (the “Minimum Improvements”); and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Redeveloper to construct, the Authority is prepared to grant the Redeveloper funds in the amount of up to \$2,132,400 (the “Redevelopment Grant”) for the Public Redevelopment Costs (as defined herein); and

WHEREAS, the Authority will be reimbursed for the costs of the Redevelopment Grant with Tax Increment pursuant to an interfund resolution adopted by the Board of Commissioners of the Authority on November 7, 2018; and

WHEREAS, the Authority is also prepared to reimburse the City for its costs of the demolition of the substandard buildings within the TIF District, site improvements, environmental remediation, and administrative costs; and

WHEREAS, the Authority believes that the development of the TIF District pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

(The remainder of this page is intentionally left blank.)

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context, the following terms have the following defined meanings:

“Administrative Costs” means the costs described in Section 3.5 hereof.

“Agreement” means this Contract for Private Redevelopment, as the same may be from time to time modified, amended, or supplemented.

“Assessor” means the assessor of the County.

“Authority” means the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State.

“Authority Representative” means the Executive Director of the Authority.

“Board” means the Board of Commissioners of the Authority.

“Certificate of Completion” means the certification provided to the Redeveloper pursuant to Section 4.4 hereof.

“City” means the City of Shakopee, Minnesota.

“City Site Improvements” means the improvements described in EXHIBHT E to be constructed or completed by the City.

“Closing” means the date the Redeveloper purchases the Redevelopment Property as set forth in Section 3.2 hereof.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Redeveloper on the Redevelopment Property, including the Minimum Improvements which (a) must be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) must include at least the following: (1) site plan; (2) foundation plan; (3) floor plan for each floor; (4) cross-sections of each floor plan (length and width); (5) elevations (all sides, including a building materials schedule); (6) landscape and grading plan; and (7) other plans or supplements to the foregoing plans as the building officials of the City may reasonably request pursuant to applicable regulations to allow it to ascertain the nature and quality of the proposed construction work.

“County” means Scott County, Minnesota.

“Demolition” means the demolition of the old City Hall and the environmental remediation related to the Redevelopment Property.

“EDA Act” means Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

“Event of Default” means an action by the Redeveloper listed in Article IX hereof.

“Holder” means the owner of a Mortgage.

“HRA Act” means Minnesota Statutes, Sections 469.001 through 469.047, as amended.

“Interfund Loan” means, collectively, the Authority’s interfund loan approved by the Board of the Authority by resolution adopted November 7, 2018 in the amount of \$2,132,400, which will be utilized to provide the Redevelopment Grant to the Redeveloper and the City’s interfund loan approved by the City Council by resolution adopted September 19, 2017 in the amount of \$300,000, which was utilized by the City to pay the costs of demolishing the old City Hall and environmental remediation related to the Redevelopment Property.

“Material Change” means a change in construction plans that adversely affects generation of tax increment in a material manner or reduces the number of housing units.

“Maturity Date” means the earlier of the date that (i) the TIF District expires (December 31, 2046) or (ii) the Interfund Loan is paid in full, including interest.

“Minimum Assessment Agreement” means the Minimum Assessment Agreement establishing a Minimum Market Value of the Redevelopment Property and the Minimum Improvements substantially in the form attached hereto as EXHIBIT D.

“Minimum Improvements” means the construction of approximately 80 market-rate apartment units, including underground parking, and approximately 1,500 square feet of commercial space on the Redevelopment Property and all Redeveloper Site Improvements.

“Minimum Market Value” means a minimum market value for real estate tax purposes of \$12,665,400 with respect to the Redevelopment Property and Minimum Improvements as of January 2, 2021 for taxes payable beginning in 2022 through the Maturity Date.

“Mortgage” means any mortgage made by the Redeveloper which is secured, in whole or in part, with the Redevelopment Property and which is a permitted encumbrance pursuant to the provisions of Article VII hereof.

“Project” means the Minnesota River Valley Housing and Redevelopment Project No. 1.

“Public Redevelopment Costs” means the public redevelopment costs eligible to be reimbursed with Tax Increment and described in EXHIBIT E.

“Redeveloper” means Enclave Development, LLC, a North Dakota limited liability company, or its permitted successors and assigns.

“Redeveloper Site Improvements” means the improvements described in EXHIBIT E to be constructed or completed by the Redeveloper.

“Redevelopment Grant” means the grant from the Authority to the Redeveloper in the amount of up to \$2,132,400 made pursuant to Section 3.4 hereof.

“Redevelopment Plan” means the Redevelopment Plan for the Project approved and adopted by the Authority and the City Council of the City.

“Redevelopment Property” means the real property described in EXHIBIT A attached hereto.

“Redevelopment Property Purchase Price” means \$1.00.

“State” means the State of Minnesota.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the TIF District and which is remitted to the Authority as tax increment pursuant to the Tax Increment Act.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

“Tax Increment District” or “TIF District” means Tax Increment Financing District No. 20, a redevelopment district.

“Tax Increment Plan” or “TIF Plan” means the Tax Increment Financing Plan for the TIF District, as approved August 21, 2018, and as it may be amended from time to time.

“Tax Official” means the Assessor; County auditor; County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

“TIF Shortfall” means, commencing in year 2022, if the Tax Increment received by the Authority is less than \$202,000, the difference between the amount of Tax Increment received by the Authority in the applicable year and \$202,000.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, lockouts or other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in properly exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays experienced by the Redeveloper in obtaining permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 hereof, so long as the Construction Plans have been approved in accordance with Section 4.2 hereof. Unavoidable Delays shall include delays resulting from market conditions which make the Project financially infeasible.

(The remainder of this page is intentionally left blank.)

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations:

(a) The Authority is an economic development authority organized and existing under the laws of the State. Under the provisions of the EDA Act and the HRA Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder, and execution of this Agreement has been duly, properly and validly authorized by the Authority.

(b) The Authority proposes to assist in financing the Public Redevelopment Costs identified on EXHIBIT E attached hereto and incorporated herein, including, without limitation, the costs of site improvements, public infrastructure, soil remediation, a parking structure, and Demolition and remediation costs related to the Minimum Improvements and other costs eligible to be reimbursed with Tax Increment and necessary to facilitate the construction of the Minimum Improvements in accordance with the terms of this Agreement to further the objectives of the Redevelopment Plan.

(c) The Authority finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing.

(d) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the Authority, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the Authority or its officers or its resolutions.

(e) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or the validity or enforcement of this Agreement.

(f) To the best knowledge of the Authority, the Demolition was completed in compliance with all applicable governmental laws, rules and regulations, including, without limitation, all Minnesota Pollution Control Agency (the "MPCA") regulations.

Section 2.2. Representations and Warranties by the Redeveloper. The Redeveloper represents and warrants that:

(a) The Redeveloper is a limited liability company duly organized and in good standing under the laws of the State of North Dakota, is in good standing under the laws of the State and duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) If the Redeveloper acquires the Redevelopment Property pursuant to this Agreement, then the Redeveloper will construct, operate, and maintain the Minimum Improvements (excluding the sidewalk, street and alley that will be maintained by the City) in accordance with the terms of this

Agreement, the Redevelopment Plan, and all local, State, and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(c) The Redeveloper will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Redeveloper did not obtain a building permit for any portion of the Minimum Improvements before August 21, 2018, the date of approval of the TIF Plan for the TIF District.

(d) The Redeveloper has received no notice or communication from any local, State, or federal official that the activities of the Redeveloper on the Redevelopment Property may be or will be in violation of any environmental law or regulation. The Redeveloper is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim against the Redeveloper under any local, State, or federal environmental law, regulation or review procedure.

(e) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Redeveloper is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) The proposed development by the Redeveloper hereunder would not occur but for the Redevelopment Grant and other assistance being provided by the Authority hereunder.

(g) The Redeveloper must promptly advise the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting the Redeveloper or its business which may delay or require changes in construction of the Minimum Improvements.

(The remainder of this page is intentionally left blank.)

ARTICLE III

Property Acquisition; Financing

Section 3.1. Status of Redevelopment Property. The Authority owns the Redevelopment Property and intends to convey the Redevelopment Property to the Redeveloper pursuant to Section 3.2 hereof.

Section 3.2. Conveyance of Redevelopment Property.

(a) On September 4, 2018, the Board of the Authority conducted a public hearing and approved the sale of the Redevelopment Property to the Redeveloper. The Authority will convey the Redevelopment Property to the Redeveloper via a limited warranty deed. The Redevelopment Property will be conveyed “as-is” and “where-is.”

(b) Within thirty (30) days following execution of this Agreement, the Redeveloper will obtain a commitment for title insurance for the Redevelopment Property from a title insurance company (the “Title Company”) acceptable to the Redeveloper. The Redeveloper shall pay for the cost of obtaining a policy of title insurance.

(c) Within thirty (30) days after the Redeveloper’s receipt of the title commitment, the Redeveloper may give the Authority written notice of any alleged defect(s) in the marketability of the Authority’s actual and/or record title to the Redevelopment Property, or any portion thereof (the “Objections”) and request that the Authority make the Authority’s title marketable or conforming. The Redeveloper’s failure to object to defects in the marketability of Authority’s title to the Redevelopment Property, in writing, within the time period set forth above or at any time prior to Closing, shall be deemed a waiver of the Redeveloper’s right to require the Authority to cure such defects. If the Redeveloper notifies the Authority of Objections within the time period set forth above, the Authority shall use good faith efforts to make the Authority’s actual and record title to the Redevelopment Property marketable. The Authority shall have up to twenty (20) days from the Authority’s receipt of the Redeveloper’s Objections to use good faith efforts to make the Authority’s actual and record title to the Property marketable. In no event will the Authority be required to expend more than \$10,000 in its good faith efforts to make the Authority’s actual and record title to the Redevelopment Property marketable. If the Authority makes the Authority’s title marketable within the twenty (20) day period, the Authority shall notify the Redeveloper, in writing, and the parties shall close pursuant to the terms of this Agreement. If the Authority is unable to make title marketable within the twenty (20) day period, the Redeveloper may either: (i) terminate this Agreement by delivering written notice of termination to the Authority; (ii) notify the Authority that the Redeveloper waives the Redeveloper’s Objections; or (iii) delay Closing and cure the title issues at its own expense. If the Redeveloper waives the Redeveloper’s Objections, the matters giving rise to such Objections shall be deemed a “Permitted Encumbrance” and the parties shall otherwise perform their obligations under this Agreement. The Authority shall have no obligation to take any action to clear defects in the title to the Redevelopment Property other than the good faith efforts described above.

(d) From the date of this Agreement until the Closing, the Redeveloper shall have the right, at its sole cost and expense, to examine and inspect the Redevelopment Property and to conduct feasibility studies with regard to the redevelopment, ownership, and operation of the Redevelopment Property, including, but not limited to, environmental reviews, soil condition testing, surveying, engineering studies, appraisals and any other physical inspections of the Redevelopment Property as determined by the Redeveloper; to review all other due diligence matters related to the Redevelopment Property; and to obtain financing for the redevelopment of the Redevelopment Property and construction

of the Minimum Improvements on terms acceptable to the Redeveloper in its sole discretion. The Redeveloper may enter upon the Redevelopment Property to inspect the same, and may conduct tests and examinations with regard thereto. Without limitation, the Redeveloper is responsible for satisfying itself as to matters such as contamination, soils conditions and soil stability, and survey. The Redeveloper may cancel this Agreement for any reason by written notice to the Authority at any time prior to Closing, in which case the Redeveloper shall have no obligation to purchase the Redevelopment Property or to construct the Minimum Improvements. If the Redeveloper closes on the acquisition of the Redevelopment Property, the Redeveloper shall accept the Redevelopment Property “as is,” “where is,” and “with all faults.” Except as provided in subsection (a) above, the Authority shall have no obligation to cure any defect or other matter regarding contamination, soils conditions and soil stability, and survey, but agrees to cooperate, at no cost or expense to it, in any efforts by the Redeveloper to achieve such a cure.

Within five (5) days of the date of this Agreement, the Authority and the City shall deliver to the Redeveloper any and all material documents regarding the Redevelopment Property, including, without limitation, any and all surveys, reports, Environmental Assessments, MPCA assurance letters, and all documentation regarding the Demolition.

(e) The Redeveloper acknowledges that the Authority will be conveying the Redevelopment Property to the Redeveloper for the Redevelopment Property Purchase Price.

(f) The conveyance of the Redevelopment Property (the “Closing”) shall not take place until the Redeveloper has (i) obtained all necessary land use approvals for the Minimum Improvements from the City, including without limitation, obtaining all necessary approvals including any required rezoning and a comprehensive plan amendment; and (ii) obtained a commitment of financing for the Minimum Improvements and all conditions for Closing have been met to such lender’s satisfaction. The Closing shall take place within ten (10) days after the aforementioned conditions are satisfied.

(g) The Redeveloper, with written notice to the Authority, may terminate this Agreement at any time prior to Closing, at which time neither party shall have any further obligations hereunder; except the Redeveloper’s obligation to pay the Authority any amounts due and owing under Section 3.6.

(h) On the date the Redevelopment Property is conveyed to the Redeveloper (the “Closing”), the Authority will execute and deliver to the Redeveloper the following, in form and content reasonably acceptable to the Redeveloper:

(i) a limited warranty deed conveying the Redevelopment Property to the Redeveloper;

(ii) a non-foreign affidavit, properly executed, containing such information as is required by Internal Revenue Code section 1445(b)(2) and its regulations;

(iii) a standard form Seller’s Affidavit;

(iv) a well certificate in the form required by law;

(v) any affidavit and disclosures required by law pertaining to private sewage treatment systems; and

(vi) any other documents reasonably required by the Title Company.

(i) Notwithstanding anything to the contrary in this Agreement, if the Redeveloper fails to close on the purchase of the Redevelopment Property, the Authority's sole and exclusive remedy shall be termination of this Agreement, at which time any amounts due and owing the Authority by the Redeveloper under Section 3.6 shall be promptly paid.

Section 3.3. Reimbursement of Certain Redeveloper Costs. The Authority is authorized to acquire real property and convey real property to private entities at a price determined by the Authority in order to facilitate development of the property. The Authority has determined that, in order to make development of the Minimum Improvements financially feasible, it is necessary to reimburse the Redeveloper for a portion of the Public Redevelopment Costs of the Minimum Improvements.

Section 3.4. Redevelopment Grant.

(a) In consideration of the Redeveloper constructing the Minimum Improvements and to finance the reimbursement of Public Redevelopment Costs incurred by the Redeveloper, the Authority will provide the Redeveloper with the Redevelopment Grant in the maximum principal amount of \$2,132,400.

(b) The following conditions must be met before the first disbursement of the Redevelopment Grant will be disbursed:

(i) the Redeveloper has submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority;

(ii) the Redeveloper has submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof and has closed on the financing necessary to construct the Minimum Improvements;

(iii) the Redeveloper has executed and delivered to the Authority the Minimum Assessment Agreement substantially in the form attached hereto as EXHIBIT D; and

(iv) the Redeveloper has executed and delivered to the Authority the Guaranty described in Section 3.4(d).

(c) For each disbursement of the Redevelopment Grant, the Redeveloper shall submit to the Authority a written request for disbursement and evidence of the Redeveloper incurring Public Redevelopment Costs in the amount of the requested disbursement, including invoices or other similar evidence of expenditures. The Authority shall disburse the proceeds of the Redevelopment Grant no more often than once per month within ten (10) days of the receipt of a disbursement request (including the requisite evidence of costs incurred) from the Redeveloper. The maximum amount of the disbursements shall be \$2,132,400.

(d) The Authority has required, as a condition to providing the Redevelopment Grant to the Redeveloper, that the Redeveloper execute and deliver to the Authority a Guaranty in substantially the form set forth in EXHIBIT B hereto. Pursuant to the Guaranty, the Guarantor will guaranty that the Authority shall receive at least \$202,000 in Tax Increment each year of the TIF District, commencing in the year 2022. Commencing in the year 2022 and thereafter, if the Tax Increment derived from the TIF District each year is less than \$202,000, the Authority shall draw on the Guaranty in the amount of the difference between the Tax Increment received by the Authority during the year and \$202,000, all as more fully described in the Guaranty.

Section 3.5. Interfund Loan.

(a) The Interfund Loan is derived from funds of the City and has an interest rate of 3.0% per annum. The Authority shall reimburse the City for the principal of and interest on the Interfund Loan from Tax Increment.

(b) The Authority intends to use up to 10% of the Tax Increment for the ongoing Administrative Costs of the TIF District. All Tax Increment not used to pay the Administrative Costs of the TIF District is hereby pledged to the payment of the Interfund Loan.

(c) If at any time there is not sufficient Tax Increment to pay the principal of and interest on the Authority Interfund Loan, the Authority shall notify the Redeveloper that the Authority requests a draw under the Guaranty in the amount of the deficiency.

Section 3.6. Payment of Administrative Costs. The Redeveloper has deposited with the Authority \$12,000 to pay the initial Administrative Costs of the Authority. The Authority will use such deposit to pay “Administrative Costs,” which term means out-of-pocket costs incurred by the Authority, together with staff and consultant costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the establishment of the TIF District and redevelopment of the Redevelopment Property, and not previously paid by the Redeveloper. At the Redeveloper’s request, but no more often than monthly, the Authority will provide the Redeveloper with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Redeveloper is obligated to pay such shortfall within fifteen (15) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If Administrative Costs incurred, and reasonably anticipated to be incurred, are less than the deposit by the Redeveloper, the Authority shall return to the Redeveloper any funds not anticipated to be needed.

Section 3.7. Records. The Authority and its representatives will have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of the Redeveloper relating to the Minimum Improvements and the costs for which the Redeveloper has been reimbursed with proceeds of the Authority Interfund Loan.

Section 3.8. Exemption from Business Subsidy Act. The parties agree and understand that the purpose of the Authority’s financial assistance to the Redeveloper is to facilitate development of housing in the City, and is not a “business subsidy” within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

(The remainder of this page is intentionally left blank.)

ARTICLE IV

Construction and Maintenance of Minimum Improvements

Section 4.1. Construction of Improvements. The Redeveloper agrees that it will construct the Minimum Improvements on the Redevelopment Property substantially in accordance with the approved Construction Plans. The Redeveloper agrees that, at all times prior to the Maturity Date, it will operate and maintain, preserve and keep the Minimum Improvements or cause the improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The Authority will have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

(a) Before commencement of construction of the Minimum Improvements, the Redeveloper will submit to the Authority the Construction Plans. The Construction Plans must provide for the construction of the Minimum Improvements and must be in substantial conformity with the Redevelopment Plan, this Agreement, and all applicable State and local laws and regulations. The Authority Representative will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Redevelopment Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Redeveloper from all sources (including the Redeveloper's equity) for construction of the Minimum Improvements; and (vi) no Event of Default has occurred. Approval may be based upon a review by the City's Building Official of the Construction Plans. No approval by the Authority Representative will relieve the Redeveloper of the obligation to comply with the terms of this Agreement or of the Redevelopment Plan, applicable federal, State, and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority Representative will constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Redeveloper in writing at the time of submission, the Construction Plans will be deemed approved unless rejected in writing by the Authority Representative, in whole or in part. The rejections must set forth in detail the reasons therefor, and must be made within ten (10) days after the date of their receipt by the Authority. If the Authority Representative rejects any Construction Plans in whole or in part, the Redeveloper must submit new or corrected Construction Plans within thirty (30) days after written notification to the Redeveloper of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans will continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative's approval will not be unreasonably withheld, delayed or conditioned. Said approval will constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

(b) If the Redeveloper desires to make any Material Change in the Construction Plans after their approval by the Authority, the Redeveloper shall submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2, the Authority will approve the proposed change and notify the Redeveloper in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Redeveloper, setting forth in detail the reasons therefor. Any rejection must be made within ten (10) days after receipt of the notice of such change. The Authority's approval of any change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Redeveloper will commence the construction of the Minimum Improvements by September 30, 2019 and shall substantially complete the Minimum Improvements by December 31, 2020. Notwithstanding the forgoing, the construction commencement date shall be extended to one hundred (180) days after the Metropolitan Council's final approval of the City's Comprehensive Guide Plan Update if such date is later than September 30, 2019. If the construction commencement date is extended, the Redeveloper shall substantially complete the Minimum Improvements within eighteen (18) months of the extended construction commencement date.

(b) Construction is considered to be commenced upon the beginning of physical improvements to the Redevelopment Property beyond grading.

(c) All work with respect to the Minimum Improvements to be constructed or provided by the Redeveloper on the Redevelopment Property must be in substantial conformity with the Construction Plans as submitted by the Redeveloper and approved by the Authority. The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the Redevelopment Property, or any part thereof, that the Redeveloper, and its successors and assigns, will promptly begin and diligently prosecute to completion the development of the Redevelopment Property through the construction of the Minimum Improvements thereon, and that the construction will in any event be commenced and completed within the period specified in Section 4.3(a) hereof. Until construction of the Minimum Improvements has been completed, the Redeveloper will make reports, in the detail and at the times as may reasonably be requested by the Authority, as to the actual progress of the Redeveloper with respect to the construction.

Section 4.4. Certificate of Completion.

(a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement, the Authority Representative will furnish the Redeveloper with a Certificate of Completion in substantially the form attached hereto as EXHIBIT C. The certification by the Authority will be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. The certification and the determination will not constitute evidence of compliance with or satisfaction of any obligation of the Redeveloper to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof, except as may be expressly provided in such loan documents.

(b) The Certificate of Completion provided for in this Section 4.4 will be in the form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Redevelopment Property. If the Authority Representative refuses or fails to provide any certification in accordance with the provisions of this Section 4.4, the Authority will, within ten (10) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain the certification.

(c) Notwithstanding any provision in this Agreement to the contrary, the construction of the Minimum Improvements will be considered substantially complete if the Redeveloper has received a certificate of occupancy from the City for all housing units. The Authority will furnish the Redeveloper

with a Certificate of Completion in substantially the form attached hereto as EXHIBIT C within ten (10) days after the issuance of a certificate of occupancy from the City for all housing units.

Section 4.5. Construction of Redeveloper Site Improvements. The Redeveloper Site Improvements required to be constructed by the Redeveloper are described in EXHIBIT E. The Redeveloper understands and acknowledges that all Redeveloper Site Improvements constructed within the public right-of-way must comply with the City's 2018 standard specifications for construction, as they may be amended, currently on file with the office of the City's Engineer. Any construction work to be completed by the Redeveloper in the public right-of-way requires the proper permits and must comply with the City's insurance requirements (which shall be substantially similar to the insurance requirements set forth in Article V). The Redeveloper shall have reasonable time, following notice from the Authority, to comply with any insurance requirements that differ from those set forth in Article V.

(The remainder of this page is intentionally left blank.)

ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Redeveloper or general contractor will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy; the interest of the Authority must be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); the Authority must be listed as an additional insured on the policy; and

(iii) Workers' compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Redeveloper must maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority will furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering the risks as are ordinarily insured against by similar businesses in the Minneapolis-St. Paul metropolitan area.

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$2,000,000 (to accomplish the above-required limits, an umbrella excess liability policy may be used), and must be endorsed to show the Authority as an additional insured.

(iii) Other insurance, including workers' compensation insurance respecting all employees, if any, of the Redeveloper, in an amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Redeveloper may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article V must be taken out and maintained in responsible insurance companies selected by the Redeveloper which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Redeveloper will deposit annually with the Authority policies evidencing all the insurance, or a certificate or certificates or binders of the respective

insurers stating that the insurance is in force and effect. In lieu of separate policies, the Redeveloper may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Redeveloper will deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Redeveloper agrees to notify the Authority immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In the event this type of damage or destruction occurs, the Redeveloper will, subject to any commercially reasonable requirements of the Redeveloper's lender, forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing the damage and, to the extent necessary to accomplish the repair, reconstruction and restoration, the Redeveloper will apply the net proceeds of any insurance relating to the damage received by the Redeveloper to the payment or reimbursement of the costs thereof.

Subject to any commercially reasonable requirements by the Redeveloper's lender, the Redeveloper will complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the net proceeds of insurance received by the Redeveloper is sufficient to pay for the same. Any net proceeds remaining after completion of the repairs, construction and restoration will be the property of the Redeveloper.

(e) The Redeveloper and the Authority agree that all of the insurance provisions set forth in this Article V will terminate upon the termination of this Agreement.

(f) Notwithstanding anything to the contrary contained herein, the rights of the Authority and the City with respect to the receipt and application of any proceeds of insurance shall, in all respects, be subject and subordinate to the rights of any Holder under a Mortgage allowed pursuant to this Agreement.

(The remainder of this page is intentionally left blank.)

ARTICLE VI

Tax Increment and Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Redeveloper acknowledges that the Authority is providing substantial aid and assistance in furtherance of the development through the provision of the Redevelopment Grant. The Redeveloper understands that the Tax Increments pledged to payment of the City Interfund Loan and the EDA Interfund Loan are derived from real estate taxes on the Redevelopment Property, which taxes must be promptly and timely paid. To that end, the Redeveloper agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Redevelopment Property and the Minimum Improvements. The Redeveloper acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Redeveloper or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorneys' fees.

Section 6.2. Minimum Assessment Agreement.

(a) At the time of execution of this Agreement, the Authority and the Redeveloper shall execute the Minimum Assessment Agreement for the Redevelopment Property and Minimum Improvements. The Assessment Agreement shall specify the Minimum Market Value, notwithstanding any failure to start or complete the Minimum Improvements on the Redevelopment Property by the Maturity Date or any failure to reconstruct the Minimum Improvements after damage or destruction before the Maturity Date.

(b) Nothing in the Minimum Assessment Agreement shall limit the discretion of the Assessor to assign a market value to the Minimum Improvements or the Redevelopment Property in excess of the Assessor's Minimum Market Value or prohibit the Redeveloper from seeking through the exercise of legal or administrative remedies a reduction in any increase in the market value established pursuant to subsection (a) above; provided, however, that the Redeveloper shall not seek a reduction of such market value below the Assessor's Minimum Market Value set forth in the Minimum Assessment Agreement in any year so long as such Minimum Assessment Agreement shall remain in effect. The Minimum Assessment Agreement shall remain in effect until the Maturity Date; provided that, if at any time before the Maturity Date, the Minimum Assessment Agreement is found to be terminated or unenforceable by any Tax Official or court of competent jurisdiction, the Minimum Market Value described in this Section 6.2 shall remain an obligation of the Redeveloper or its successors and assigns (whether or not such value is binding on the Assessor), it being the intent of the parties that the obligation of the Redeveloper to maintain, and not seek reduction of, the Minimum Market Value specified in this Section 6.2 is an obligation under this Agreement as well as under the Minimum Assessment Agreement, and is enforceable by the Authority against the Redeveloper, its successors and assigns, in accordance with the terms of this Agreement and the Minimum Assessment Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Redeveloper shall not be precluded from contesting the Minimum Market Value if the Minimum Improvements or the Redevelopment Property, or any substantial portion thereof, is acquired by a public entity through eminent domain prior to the Maturity Date.

Section 6.3. Reduction of Taxes. The Redeveloper agrees that prior to the Maturity Date it will not cause a reduction in the real property taxes paid in respect of the Redevelopment Property through: (A) willful destruction of the Redevelopment Property or any part thereof (except for the planned demolition of improvements designed to promote the redevelopment of the Redevelopment Property); or

(B) willful refusal to reconstruct damaged or destroyed property. The Redeveloper also agrees that it will not, prior to the Maturity Date, seek exemption from property tax for the Redevelopment Property or any portion thereof or transfer or permit the transfer of the Redevelopment Property to any entity that is exempt from real property taxes and state law (other than any portion thereof dedicated or conveyed to the City in accordance with platting of the Redevelopment Property), or apply for a deferral of property tax on the Redevelopment Property pursuant to any law.

(The remainder of this page is intentionally left blank.)

ARTICLE VII

Financing

Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Redeveloper shall submit to the Authority reasonable evidence of one or more commitments for financing which, together with committed equity for the construction, is sufficient for payment of the Minimum Improvements. The commitments may be submitted as short term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in subsection (a) then the Authority will notify the Redeveloper in writing of its approval. The approval will not be unreasonably withheld or conditioned and either approval or rejection will be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to the evidence of financing will be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it will do so in writing specifying the basis for the rejection. In any event the Redeveloper will submit adequate evidence of financing within sixty (60) days after any rejection.

Section 7.2. Authority's Option to Cure Default on Mortgage. In the event that any portion of the Redeveloper's funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to this Article VII, the Redeveloper shall make commercially reasonable efforts to cause the Authority to receive copies of any notice of default received by the Redeveloper from the Holder of the Mortgage. Thereafter, subject to commercially reasonable requirements of the Redeveloper's lender, and following at least thirty (30) days' notice to the Redeveloper, the Authority will have the right, but not the obligation, to cure any Mortgage default on behalf of the Redeveloper within the cure periods as are available to the Redeveloper under the Mortgage documents.

Section 7.3 Modification; Subordination. If the Redeveloper requires mortgage financing for the construction of the Minimum Improvements, the Authority agrees to subordinate its rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing, and the Authority agrees to consent to such subordination, in accordance with the terms of a subordination agreement in form reasonably acceptable to the Authority and the Redeveloper's lender.

Section 7.4 Termination. All provisions of this Article VII shall terminate with respect to the Minimum Improvements, upon delivery of the Certificate of Completion for the Minimum Improvements. The Redeveloper or any successor in interest to the Minimum Improvements or portion thereof may sell, assign, transfer, or engage in financing or any other transaction creating a mortgage or encumbrance or lien on the Minimum Improvements or any portion thereof for which a Certificate of Completion has been obtained, without obtaining prior written approval of the Authority, provided that such sale, financing, or other transaction creating a mortgage or encumbrance shall not be deemed as resulting in any subordination of the Authority's rights under this Agreement unless the Authority expressly consents to such a subordination.

(The remainder of this page is intentionally left blank.)

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Development. The Redeveloper represents and agrees that its purchase of the Redevelopment Property, and its other undertakings pursuant to the Agreement, are, and will be used, for the purpose of development of the Redevelopment Property and not for speculation in land holding.

Section 8.2. Prohibition Against Redeveloper's Transfer of Property and Assignment of Agreement. The Redeveloper represents and agrees that prior to issuance of the Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the Redevelopment Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Redeveloper has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Redevelopment Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (except a lease to a residential occupant or a lease of the commercial space to a commercial occupant), without the prior written approval of the Authority unless the Redeveloper remains liable and bound by this Agreement in which event the Authority's approval is not required. Any transfer of this type will be subject to the provisions of this Agreement.

(b) In the event the Redeveloper, upon transfer or assignment of the Redevelopment Property seeks to be released from its obligations under this Agreement, the Authority will be entitled to require, except as otherwise provided in this Agreement, as conditions to any release that:

(i) Any proposed transferee will have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper.

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records, will, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Redevelopment Property, or any part thereof, will not, for whatever reason, have assumed these obligations or so agreed, will not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the Authority of any rights or remedies or controls with respect to the Redevelopment Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Redevelopment Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, will operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the Authority would have had, had there been no transfer or change. In the absence of specific written agreement by the Authority to the contrary, no transfer or approval by the

Authority thereof will be deemed to relieve the Redeveloper, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Redevelopment Property governed by this Article VIII, must be in a form reasonably satisfactory to the Authority.

In the event the foregoing conditions are satisfied then the Redeveloper will be released from its obligation under this Agreement.

(c) Notwithstanding any provision in this Agreement to the contrary, the Authority agrees that the Redeveloper shall have the right to assign all of its rights and obligations under this Agreement to a related entity, subject only to the requirements of Section 8.2(b)(iii) hereof. In the event of an assignment that meets the requirements of Section 8.2(b), Enclave Development, LLC will be released from its obligations under this Agreement and the Guaranty.

After issuance of the Certificate of Completion for the Minimum Improvements, the Redeveloper may transfer or assign the Redevelopment Property or the Redeveloper's interest in this Agreement if it obtains the prior written consent of the Authority (which consent will not be unreasonably withheld or conditioned) and the transferee or assignee is bound by all the Redeveloper's obligations hereunder. The Redeveloper must submit to the Authority written evidence of any transfer or assignment, including the transferee or assignee's express assumption of the Redeveloper's obligations under this Agreement (including the Minimum Assessment Agreement and the Guaranty). The approval will not be unreasonably withheld or conditioned and either approval or rejection will be given within thirty (30) days from the date when the Authority receives the Redeveloper's request for an assignment. A failure by the Authority to respond to the assignment will be deemed to constitute an approval hereunder. If the Authority rejects the request for an assignment as inadequate, it will do so in writing specifying the basis for the rejection. If the Redeveloper fails to provide evidence of transfer and assumption, the Redeveloper will remain bound by all its obligations under this Agreement.

Section 8.3. Release and Indemnification Covenants.

(a) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Redeveloper releases from and covenants and agrees that the Authority and its respective governing body members, officers, agents, servants and employees thereof will not be liable for and agrees to indemnify and hold harmless the Authority and its respective governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person resulting from any defect in the Minimum Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Redeveloper agrees to protect and defend the Authority and its respective governing body members, officers, agents, servants and employees thereof, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Minimum Improvements.

(c) The Authority and its respective governing body members, officers, agents, servants and employees thereof will not be liable for any damage or injury to the persons or property of the Redeveloper or its officers, agents, servants or employees or any other person who may be about the

Redevelopment Property or Minimum Improvements due to any act of negligence of any person, except if such damage or injury to persons or property is due to any act of negligence by the Authority and its respective governing body members, officers, agents, servants and employees.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority contained herein will be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any governing body member, officer, agent, servant or employee of the Authority in the individual capacity thereof.

(The remainder of this page is intentionally left blank.)

ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following will be “Events of Default” under this Agreement and the term “Event of Default” means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

- (a) The Redeveloper or the Authority fails to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement; or
- (b) The Redeveloper:
 - (i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;
 - (ii) makes an assignment for benefit of its creditors;
 - (iii) admits in writing its inability to pay its debts generally as they become due; or
 - (iv) is adjudicated as bankrupt or insolvent;
- (c) Prior to the Maturity Date, the Redeveloper appeals or challenges the Minimum Market Value of the Redevelopment Property or the Minimum Improvements under this Agreement or the Minimum Assessment Agreement, except as otherwise permitted in Article VI hereof; and
- (d) A default under the Guaranty.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty (30) days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

- (a) Suspend its performance under the Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under the Agreement.
- (b) Cancel and rescind or terminate the Agreement.
- (c) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Redeveloper is intended to be exclusive of any other available remedy or remedies, but each and every remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default will impair any right or power or will be construed to be a waiver thereof, but any right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it will not be necessary to give notice, other than the notices already required in Section 9.2 hereof.

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, the waiver will be limited to the particular breach so waived and will not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. Attorneys' Fees. Whenever any Event of Default occurs and if the Authority shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Redeveloper under this Agreement, the Redeveloper agrees that it shall, within 10 days of written demand by the Authority, pay to the Authority the reasonable fees of such attorneys and such other expenses so incurred by the Authority.

(The remainder of this page is intentionally left blank.)

ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Redeveloper, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority has any personal interest, direct or indirect, in the Agreement, nor has any member, official, or employee participated in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Authority will be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Redeveloper or successor or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. The Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, State, and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Redeveloper agrees that, prior to the Maturity Date, the Redeveloper, and its successors and assigns, will use the Redevelopment Property solely for the development of residential rental housing and commercial space in accordance with the terms of this Agreement, and will not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Redevelopment Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

Section 10.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the following addresses (or to such other addresses as either party may notify the other):

To the Redeveloper: Enclave Development, LLC
[ADDRESS]
Attn: _____

With a Copy to: Siegel Brill, P.A.
100 Washington Avenue South, Suite 1300
Minneapolis, MN 55401
Attn: Tony Gleekel, Esq.

To the Authority: Shakopee EDA
485 Gorman Street
Shakopee, MN 55379
Attn: Executive Director

Section 10.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute one and the same instrument.

Section 10.7. Recording. The Authority may record this Agreement and any amendments thereto with the County Recorder or Registrar of Titles of the County, as applicable. The Redeveloper must pay all costs for recording.

Section 10.8. Amendment. This Agreement may be amended only by written agreement approved by the Authority and the Redeveloper.

Section 10.9. Authority Approvals. Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative.

Section 10.10. Termination. This Agreement terminates on the Maturity Date unless terminated earlier; provided however Sections 3.5 and 8.3 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 10.11. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 10.12. Estoppel Certificate. Each party, respectively, agrees that at any time and from time to time within ten (10) business days after receipt of a written request by the other party, to execute, acknowledge and deliver to such party a statement in writing and in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments certifying: (a) that this Agreement is unmodified and in full force and effect or, if there have been modifications, that the same are in full force and effect as modified and identifying the modifications; (b) that no party is in default under any provisions of this Agreement or, if there has been a default, the nature of such default; (c) that all work to be performed under this Agreement has been performed or, if not so performed, specifying the work to be performed; and (d) as to any other matter that the requesting party or a prospective mortgagee or other lender shall reasonably request. It is intended that any such statement may be relied upon by any person, prospective mortgagee of, or assignee of any mortgagee of, such interest.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Authority has caused this Contract for Private Redevelopment to be duly executed in its name and behalf and the Redeveloper has caused this Contract for Private Redevelopment to be duly executed in its name and behalf, all as of the date and year first written above.

**ECONOMIC DEVELOPMENT AUTHORITY FOR
THE CITY OF SHAKOPEE, MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of December, 2018, by Matt Lehman, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of December, 2018, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

ENCLAVE DEVELOPMENT, LLC

By _____
Name _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this December, 2018, by _____, the _____ of Enclave Development, LLC, a North Dakota limited liability company, on behalf of the Redeveloper.

Notary Public

EXHIBIT A

DESCRIPTION OF REDEVELOPMENT PROPERTY

Lots 1 and 2, except the North 45 feet thereof, all of Lot 3 and the West ½ of the South 102 feet of Lot 4, all in Block 23, in the City of Shakopee, according to the plat of Shakopee City, on file and of record in the office of the Register of Deeds in and for Scott County, Minnesota. [Torrens Property]

The North 45 feet of Lots 1 and 2, Block 23, City of Shakopee, Scott County, Minnesota, according to the plat of Shakopee City on file and of record in the office of the Register of Deeds in and for county and state. [Abstract Property]

EXHIBIT B

FORM OF GUARANTY

THIS GUARANTY AGREEMENT (the “Guaranty”) is made this _____ day of December, 2018, by ENCLAVE DEVELOPMENT, LLC, a North Dakota limited liability company (the “Guarantor”), for the benefit of the ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”). All capitalized terms used herein and not otherwise defined herein shall have the meaning given such terms in the Contract for Private Redevelopment, dated November 7, 2018 (the “Agreement”), between the Guarantor and the Authority.

WITNESSETH:

WHEREAS, the Authority and the Guarantor have entered into the Agreement, under which the Authority agreed to convey certain property referred to in the Agreement (the “Redevelopment Property”), and the Guarantor, as Redeveloper under the Agreement, will agree to develop approximately 80 market-rate apartment units, including underground parking, at grade enclosed parking, and approximately 1,500 square feet of commercial space (the “Minimum Improvements”), within Tax Increment Financing District No. 20 (the “TIF District”), a redevelopment district located within the Minnesota River Valley Housing and Redevelopment Project No. 1; and

WHEREAS, pursuant to the Agreement, the Guarantor will also agree to make certain public improvements, and the Authority has proposed to grant the Guarantor funds (the “Redevelopment Grant”) for the costs of site improvement, public infrastructure, and a parking structure related to the Minimum Improvements and other costs eligible to be reimbursed with tax increment; and

WHEREAS, on September 17, 2018, the City Council of the City adopted a resolution authorizing an interfund loan (the “City Interfund Loan”) in a principal amount of up to \$300,000, the proceeds of which were used to pay the costs of demolishing the old City Hall previously located on the Redevelopment Property, the costs of environmental remediation, and administrative costs of the TIF District.

WHEREAS, on November 7, 2018, the Board of Commissioners of the Authority adopted a resolution authorizing an interfund loan (the “Authority Interfund Loan”) in a principal amount of up to \$2,132,400, the proceeds of which the Authority will use to make the Redeveloper Grant to the Guarantor; and

WHEREAS, the City Interfund Loan and the Authority Interfund Loan are referred to herein as the “Interfund Loans”; and

WHEREAS, prior to providing the Redevelopment Grant, the Authority requires that the Guarantor guaranty the repayment of the Redeveloper Grant in the event that Tax Increment generated from the property within the TIF District is not sufficient to reimburse the Authority Interfund Loan and the City interfund Loan; and

NOW, THEREFORE, in consideration of the premises and to induce the Authority to provide the Redevelopment Grant, the Guarantor hereby agrees as follows:

Section 1. The Guarantor hereby unconditionally guarantees to the Authority that the Authority shall receive at least \$202,000 in Tax Increment each year for the life of the TIF District, commencing in

the year 2022. Commencing in the year 2022 and thereafter, if the Tax Increment derived from the TIF District each year is less than \$202,000, the Authority shall draw on the Guaranty in the amount of the difference between the Tax Increment received by the Authority during the year and \$202,000 (the "TIF Shortfall"). This Guaranty will ensure that the Authority and the City are reimbursed for the Interfund Loan with interest accruing at a rate of 3.0% per annum. All payments made under this Guaranty shall be paid in lawful money of the United States of America.

Section 2. The obligations of the Guarantor under this Guaranty shall be absolute and unconditional and shall remain in full force and effect until the Interfund Loan has been repaid, and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including, without limitation, any of the following:

- (a) The failure to give notice to any person of the occurrence of an event of default under the terms and provisions of this Guaranty;
- (b) Any lack of validity or enforceability of this Guaranty or the Agreement or any other agreement or instrument relating thereto;
- (c) The extension of the time for payment of principal of or interest under this Guaranty;
- (d) Any failure, omission, delay, or lack on the part of the Authority to enforce, assert, or exercise any right, power, or remedy conferred on the Authority in this Guaranty or other instruments executed and delivered in connection with the loan contemplated thereby, or any other act or acts on the part of the Authority; and
- (e) The default or failure of the Guarantor to perform any of the obligations set forth in this Guaranty; and
- (f) Any Transfer of any of the Redevelopment Property by the Guarantor to any third party, unless the Authority expressly releases the Guarantor in whole or in part from its obligations under this Guaranty, as required under the Agreement, or otherwise.

Section 3. No set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature that the Redeveloper or the Guarantor have or may have against the Authority shall be available hereunder to the Guarantor against the Authority.

Section 4. In addition to the ability to draw on the Guaranty pursuant to Section 1 hereof, in the event of a default under the Agreement by the Redeveloper that causes the Tax Increment collected by the Authority to decrease below \$202,000 annually, the Authority may proceed hereunder; and the Authority, in its sole discretion, shall have the right to proceed first and directly against the Guarantor for the full amount of the TIF Shortfall due without proceeding against or exhausting any other remedies it may have as to the Guarantor, as Redeveloper under the Agreement. For the avoidance of doubt, the full amount due is the remaining principal of and interest on the Authority Interfund Loan and the City Interfund Loan.

Section 5. The Guarantor hereby expressly waives notice from the Authority of acceptance of or any reliance upon this Guaranty. The Guarantor agrees to pay all the costs, expenses, and fees, including attorneys' fees, which may be incurred by the Authority in enforcing or attempting to enforce this Guaranty whether the same shall be enforced by suit or otherwise.

Section 6. This Guaranty is entered into by the Guarantor with the Authority for the benefit of the Authority, which shall be entitled to enforce performance and observance of this Guaranty.

Section 7. The Guarantor is duly authorized and empowered to execute and deliver this Guaranty and perform all obligations hereunder.

Section 8. The performance or observance of any promise or condition set forth in this Guaranty may be waived, amended, or modified only by a writing signed by the Guarantor and the Authority. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right, or remedy.

Section 9. This Guaranty is made and shall be governed in all respects by the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Guaranty shall be heard in the state or federal courts of Minnesota, and all parties to this Guaranty waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 10. If any provision or application of this Guaranty is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications that can be given effect, and this Guaranty shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby.

Section 11. All notices required hereunder shall be given by depositing in the U.S. mail, postage prepaid, first class mail, return receipt requested, to the following addresses (or such other addresses as either party may notify the other):

To the Guarantor:	Enclave Development, LLC 1 Second Street North, Suite 102 Fargo, ND 58102 Attn: Austin Morris
With a Copy to:	Siegel Brill, P.A. 100 Washington Avenue South, Suite 1300 Minneapolis, MN 55401 Attn: Tony Gleekel, Esq.
To the Authority:	Shakopee EDA 485 Gorman Street Shakopee, MN 55379 Attn: Executive Director

Section 12. This Guaranty constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Guaranty, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, concerning the Guaranty. Nothing contained herein shall effect or impair the Authority's rights under Agreement executed by the Redeveloper for the benefit of the Authority and dated as of the date hereof.

Section 13. This Guaranty shall terminate on the date that the principal of and interest on the Authority Interfund Loan and the City Interfund Loan have been paid in full.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed as of the date first above written.

ENCLAVE DEVELOPMENT, LLC

By _____
Name _____
Its _____

EXHIBIT C

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Enclave Development, LLC (the “Redeveloper”) has fully complied with its obligations under Article IV of that document titled “Contract for Private Redevelopment,” dated _____, 2018 (the “Agreement”), between the Economic Development Authority for the City of Shakopee, Minnesota (the “Authority”) and the Redeveloper, with respect to construction of the Minimum Improvements in accordance with Article IV of the Agreement, and that the Redeveloper is released and forever discharged from its obligations with respect to construction of the Minimum Improvements under Article IV of the Agreement.

Dated: _____, 20__.

**ECONOMIC DEVELOPMENT AUTHORITY
FOR THE CITY OF SHAKOPEE, MINNESOTA**

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____, 20__, by _____, the Executive Director of the Economic Development Authority for the City of Shakopee, on behalf of the Authority.

Notary Public

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT D

MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ____ day of December, 2018 (the “Minimum Assessment Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF SHAKOPEE, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and ENCLAVE DEVELOPMENT, LLC, a North Dakota limited liability company, its successors and assigns (the “Owner”).

WITNESSETH:

WHEREAS, the Authority and the Owner have entered into a Contract for Private Redevelopment, dated November 7, 2018 (the “Agreement”), concerning the property legally described on EXHIBIT A attached hereto (the “Redevelopment Property”); and

WHEREAS, pursuant to the Agreement, the Owner will develop on the Redevelopment Property approximately 80 market-rate apartment units, including underground parking, at grade enclosed parking, and approximately 1,500 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, the Authority and the Owner desires to establish a minimum market value for the Redevelopment Property and the Minimum Improvements to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177, subdivision 8; and

WHEREAS, the Authority and the County Assessor for Scott County, Minnesota have reviewed the Plans for the Minimum Improvements which the Owner has agreed to construct on the Redevelopment Property pursuant to the Agreement; and

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made herein and in the Agreement by each to the other, do hereby agree as follows:

1. The Minimum Market Value for the Redevelopment Property with the Minimum Improvements shall be \$12,665,400 (“Minimum Market Value”). The parties agree that the Minimum Market Value shall be placed against the Redevelopment Property as of January 2, 2021, for taxes payable beginning in 2022, notwithstanding any failure to start or complete construction of such Minimum Improvements by that date.

2. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date. The Maturity Date has the meaning given to it under the Agreement.

3. This Minimum Assessment Agreement shall be promptly recorded by the Owner with a copy of Minnesota Statutes, Section 469.177, subdivision 8 set forth in EXHIBIT B attached hereto. The Owner shall pay all costs of recording this Minimum Assessment Agreement.

4. Neither the preambles nor the provisions of this Minimum Assessment Agreement are intended to, nor shall they be construed as, modifying the terms of the Agreement. Unless the context indicates clearly to the contrary, the terms used in this Minimum Assessment Agreement shall have the same meaning as the terms used in the Agreement.

5. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

6. Each of the parties has authority to enter into this Minimum Assessment Agreement and to take all actions required of it and has taken all actions necessary to authorize the execution and delivery of this Minimum Assessment Agreement.

7. In the event any provision of this Minimum Assessment Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Redevelopment Property, or for carrying out the expressed intention of this Minimum Assessment Agreement.

9. Except as provided in Section 8 hereof, this Minimum Assessment Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

10. This Minimum Assessment Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. This Minimum Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

12. Subject to the terms of the Agreement, the Owner shall have the normal remedies available under the law to contest the Assessor's assessed value of the Redevelopment Property in excess of the Minimum Market Value.

IN WITNESS WHEREOF, the Authority and the Owner have executed this Minimum Assessment Agreement as of the date and year first written above.

**ECONOMIC DEVELOPMENT AUTHORITY FOR
THE CITY OF SHAKOPEE, MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____, 2018, by Matt Lehman, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____, 2018, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

ENCLAVE DEVELOPMENT, LLC

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2018, by _____, the _____ of Enclave Development, LLC, a North Dakota limited liability company, on behalf of the Owner.

Notary Public

This Document was drafted by:

KENNEDY & GRAVEN, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

CERTIFICATION BY ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, and being of the opinion that the minimum market value contained in the foregoing Agreement appears reasonable, hereby certify as follows: The undersigned Assessor being legally responsible for the assessment of the described property, hereby certifies that the market value assigned to such land and improvements at the property, legally described on EXHIBIT A attached hereto, shall be not less than \$12,665,400 as of January 2, 2021, for taxes payable beginning in 2022, until termination of this Agreement.

County Assessor for Scott County, Minnesota

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____ day of December, 2018, by _____, the County Assessor of Scott County, Minnesota.

Notary Public

EXHIBIT A
TO ASSESSMENT AGREEMENT

The Redevelopment Property is legally described as follows:

Lots 1 and 2, except the North 45 feet thereof, all of Lot 3 and the West ½ of the South 102 feet of Lot 4, all in Block 23, in the City of Shakopee, according to the plat of Shakopee City, on file and of record in the office of the Register of Deeds in and for Scott County, Minnesota. [Torrens Property]

The North 45 feet of Lots 1 and 2, Block 23, City of Shakopee, Scott County, Minnesota, according to the plat of Shakopee City on file and of record in the office of the Register of Deeds in and for county and state. [Abstract Property]

EXHIBIT B TO ASSESSMENT AGREEMENT

Section 469.177, subd. 8. **Assessment Agreements.** An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the Maturity Date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under Section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor's review and certification is not required if the document terminates an agreement. A change to an agreement not fully

executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.

EXHIBIT E

PUBLIC REDEVELOPMENT COSTS

REDEVELOPER SITE IMPROVEMENTS

The following improvements will be completed by the Redeveloper and the costs will be paid with the Grant following satisfaction of the requirements set forth in Sections 3.4(b) and 3.4(c) of this Agreement:

Type of Costs	Maximum Amount to be Reimbursed
Redeveloper Improvements	
Removal of basement, including but not limited to: removal of basements, asbestos abatement, testing services, geotechnical services, etc.	100% of cost to Redeveloper
Removal of bedrock using any means deemed necessary to accomplish project	100% of cost to Redeveloper
Construction of parking, including both levels of precast and topping, slabs, and any structural items necessary to complete parking	100% of cost to Redeveloper
All shoring necessary to redevelop the site	100% of cost to Redeveloper
Redeveloper Site Improvements	
Sidewalks, curbs, and landscaping on Second Avenue and Holmes Street adjacent to Redevelopment Property	100% of cost to Redeveloper
Installation of new utilities in alley and street adjacent to Redevelopment Property (not including any fees or hook up charges)	100% of cost to Redeveloper
**Cost reimbursement for all items above shall include general conditions, overhead, and developer's and general contractor's fees	

CITY SITE IMPROVEMENTS

The following improvements will be constructed by the City and will be paid with Tax Increment:

City Site Improvements	Reimbursed
Concrete alley adjacent to Redevelopment Property**	70% of cost reimbursed with TIF

***The Redeveloper will be assessed for the remaining 30% of the cost of the concrete alley allocable to the Redevelopment Property. As part of the Redevelopment Grant, the Authority will reimburse the Redeveloper for the principal amount of the special assessments at the time the Redeveloper has paid the special assessments (either in a lump sum or over time).*